

N.D.A.G. Letter to Sinner (April 26, 1989)

April 26, 1989

Honorable George A. Sinner
Governor
Office of the Governor
State Capitol
Bismarck, ND 58505

Dear Governor Sinner:

Thank you for your inquiry concerning your authority to overrule the decisions of appointed executive officers.

I understand that the state Game and Fish Commissioner Dale Henegar intends to introduce into North Dakota waters a European breed of fish called the zander and that you believe that this introduction could have disastrous effects on the state's ecosystem. You have asked me whether the law authorizes you to overrule the Commissioner's decision on this matter.

N.D.C.C. § 54-07-01 authorizes the Governor to supervise the official conduct of all executive officers. That statute provides in relevant part:

54-07-01. Powers and duties of governor. In addition to the powers and duties prescribed by the constitution, the governor:

1. Shall supervise the official conduct of all executive and ministerial officers.

The state Game and Fish Commissioner is an executive officer. See State v. Frazier, 182 N.W. 545, 548 (N.D. 1921); N.D.C.C. § 20.1-02-01. The Game and Fish Commissioner's official conduct includes securing and introducing into the state game birds, animals, and fish. N.D.C.C. § 20.1-02-05.

Pursuant to N.D.C.C. § 54-07-01, therefore, the Governor has the authority and, indeed, the duty to supervise the Game and Fish Commissioner's official conduct, including the introduction of new species of fish into the state.

As prior Attorney General's opinions show, this power of supervision includes the authority to direct the actions of and issue Executive Orders to such executive officers.

A 1983 Attorney General's opinion, for example, states that the Governor has the authority to issue "Executive Orders" to executive agencies under his supervision and control. That letter states: "the authority of the Governor to issue Executive Orders is

found as an implied power of the Governor as part of his authority to 'supervise the official conduct of all executive and ministerial officers.'" November 10, 1983, letter to Honorable James A. Peterson.

Therefore, the Governor has the power of direction over the Game and Fish Commissioner concerning his official conduct. Such power of direction necessarily includes the authority to overrule the Commissioner's decisions when necessary.

It could be argued that the Governor does not have such authority because the Game and Fish Commissioner is appointed to a two-year term and may only be removed from office during that term for cause. See N.D.C.C. § 20.1-02-01. However, the North Dakota Supreme Court has held that the existence of restrictions on the Governor's power of removal does not eliminate his power of supervision. The court wrote:

[w]hen the legislature conferred upon the Governor the power to remove certain appointive officers for cause, it could not have been its intention to deprive him of his power to supervise official conduct and to take whatever steps might be necessary to insure the efficient operation of the executive branch of government.

State v. Guy, 125 N.W.2d 468, 473 (N.D. 1963).

Therefore, the fact that the Game and Fish Commissioner is appointed to a two-year term and may only be removed for cause does not deprive the Governor of his authority to supervise the Commissioner's official conduct and to direct (or overrule) the Commissioner's acts when necessary for the state's interests.

I hope that this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

cv